

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Allan Lewis

v.

Civil No. 09-cv-002-JL

Hon. Peter Fauver, et al.

REPORT AND RECOMMENDATION

Before the Court is Allan Lewis' complaint (document no. 1), brought pursuant to 42 U.S.C. § 1983, alleging that defendants have violated his constitutional rights by depriving him of a civil jury trial. Because Lewis is proceeding pro se and in forma pauperis, the matter is before me for preliminary review to determine, among other things, whether or not the complaint states any claim upon which relief might be granted. See United States District Court District of New Hampshire Local Rule ("LR") 4.3(d)(1)(B) (authorizing Magistrate Judge to conduct preliminary review to determine whether action may proceed); 28 U.S.C. § 1915(a)(1).

Standard of Review

Under this Court's local rules, when a plaintiff commences an action pro se and in forma pauperis, the Magistrate Judge is

directed to conduct a preliminary review. LR 4.3(d)(2). In conducting the preliminary review, the Court construes pro se pleadings liberally, however inartfully pleaded. See Erickson v. Pardus, 551 U.S. 89, ___, 127 S. Ct. 2197, 2200 (2007) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519, 520-21 (1972) to construe pro se pleadings liberally in favor of the pro se party). "The policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled." See Castro v. United States, 540 U.S. 375, 381 (2003) (noting that courts may construe pro se pleadings so as to avoid inappropriately stringent rules and unnecessary dismissals of claims); Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997). All of the factual assertions made by a pro se plaintiff and inferences reasonably drawn therefrom must be accepted as true. See id. This review ensures that pro se pleadings are given fair and meaningful consideration.

Background

On April 1, 2005, Lewis attended a scheduling conference for a pending civil action, to which he was a party, in the Strafford

County Superior Court ("SCSC"). On May 2, 2005, the SCSC issued an order setting a date for jury trial on July 18, 2005. No exception was taken to the scheduling order. On July 18, 2005, Lewis appeared for trial. Lewis alleges that, on that date, Judge Peter Fauver and Attorney Scott Ewing conspired to, and did, deprive him of his right to a jury trial without due process, in violation of his Seventh and Fourteenth Amendment rights.

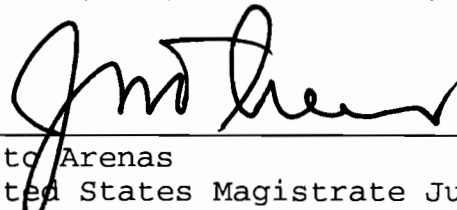
Discussion

Congress did not provide a statute of limitations for § 1983 actions, so federal courts must borrow the personal injury limitations period and tolling provisions of the forum state. See Wilson v. Garcia, 471 U.S. 261, 276-80 (1985); Lopez-Gonzalez v. Municipality of Comerio, 404 F.3d 548, 551 (1st Cir. 2005). In New Hampshire, all personal actions, other than slander and libel, are governed by N.H. Rev. Stat. Ann. ("RSA") 508:4 I, which provides a three-year limitations period. Lewis alleges that his rights were violated by the defendants on July 18, 2005. This suit was not filed until January 5, 2009, approximately three and a half years later. Because this suit was not filed

within the three-year time limit available to commence this action, I recommend that it be dismissed.

Conclusion

Any objections to this Report and Recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).



Justo Arenas
United States Magistrate Judge

Date: March 30, 2009
cc: Allan Lewis, pro se